IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WP(C).No. 2500 of 2005(V)

AGAINST THE ORDER IN IA.1918/02 IN OS.304/2001 of MUNSIFF COURT, KODUNGALLUR

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PETITIONER:

KUMARAN, S/O. AYYAN,
VENNARAPARAMBIL HOUSE, ANAPUZHA, METHALA,
KODUNGALLUR, THRISSUR.

BY ADV. SRI.K.A.SREEJITH

RESPONDENT:

SHANMUGHAN, S/O. ITTY,
PALAKKAPARAMBIL HOUSE, ANAPUZHA, METHALA,
KODUNGALLUR, THRISSUR.

BY ADV. SRI.RENJITH THAMPAN
SMT.P.A.ANITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.2500/2005 V

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF PLAINT O.S.304/2001 FILED BY RESPONDENT.**

EXT.P2: **COPY OF WRITTEN STATEMENT FILED BY THE PETITIONER AGAINST THE O.S.**

EXT.P3: **COPY OF I.A.1918/02 FILED BY RESPONDENT BEFORE THE MUNSIFF COURT, KODUNGALLUR.**

EXT.P4: **COPY OF COUNTER TO THE I.A.1918/02 FILED BY THE PETITIONER.**

EXT.P5: **COPY OF ORDER IN I.A.1918/02 PASSED BY THE HON'BLE MUNSIFF COURT, KODUNGALLUR.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 2500 of 2005

Dated this the 13th day of August , 2007

JUDGMENT

Strenuous submissions of Sri.K.A.Sreejith, the learned counsel for the petitioner notwithstanding, I am unable to accept his submission that Ext.P5 order, by which the learned Munsiff allowed an application for amendment of the plaint is vitiated to the extent of warranting interference by this court in its visitorial jurisdiction under Article 227 of the Constitution. The suit is one for injunction based on a claim of easement of necessity. The servient tenement was described along a particular route in the original plaint. Under Ext.P5 , position of the pathway is allowed to be shifted and so also the respondent is permitted to raise an alternative plea based on an easement by prescription. Though it may be true that the petitioner has been put to inconvenience on account of the amendment, it cannot be said that any legal prejudice has been caused to the petitioner because of the same. The inconvenience caused to the petitioner on account of the necessity to raise additional pleadings is capable of being compensated by costs.

2. Under the above circumstances, even as I refuse to set aside Ext.P5, I modify Ext.P5 by making Ext.P5 conditional. The respondent shall pay a sum of Rs.1,000/- (Rupees One Thousand) by way of cost to the petitioner either directly or through his counsel in this court within one month from today, failing which Ext.P5 will stand set aside and the amendment application will stand allowed. If cost is paid ext.P5 will stand confirmed.

The writ petition is disposed of as above.

PIUS C. KURIAKOSE,
JUDGE.

Dpk